

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 12-615V

January 11, 2013

Not to be Published

WILLIAM G. PARKINSON, *
Administrator of the Estate of *
JUDIANNE T. PARKINSON, *
Deceased, *

Petitioner, *

v. * Motion to dismiss; flu vaccine;

too long an interval to GBS

SECRETARY OF HEALTH *
AND HUMAN SERVICES, *

Respondent. *

William G. Parkinson, Hewlett, NY, for petitioner (pro se).
Lara A. Englund, Washington, DC, for respondent.

MILLMAN, Special Master

DECISION¹

On September 18, 2012, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10-34, alleging that influenza vaccine administered October 8,

¹ Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post this unpublished decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When such a decision is filed, petitioner has 14 days to identify and move to redact such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access.

2009 caused his wife Guillain-Barré syndrome (GBS) from which she died on June 7, 2012. Petitioner did not file any medical records with the petition.

On October 15, 2012, the undersigned issued an initial Order in this case, setting a telephonic status conference for January 10, 2013, and appending a list of counsel who specialize in vaccine injury cases before this court.

On January 10, 2013, the undersigned held a telephonic status conference with the parties, during which petitioner advised the undersigned that he was going to drop the case. The undersigned asked if he had spoken to one of the counsel on the vaccine counsel list and he replied that he had. Counsel had told him that there was too long an interval between the date of vaccination and the onset of his wife's GBS for him to be able to prove causation. The undersigned asked petitioner if a correct characterization of his statement that he was going to drop the case was that he was moving to dismiss, and he replied in the affirmative.

The undersigned **GRANTS** petitioner's motion to dismiss.

DISCUSSION

To satisfy his burden of proving causation in fact, petitioner must prove by preponderant evidence: "(1) a medical theory causally connecting the vaccination and the injury; (2) a logical sequence of cause and effect showing that the vaccination was the reason for the injury; and (3) a showing of a proximate temporal relationship between vaccination and injury." Althen v. Sec'y of HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005). In Althen, the Federal Circuit quoted its opinion in Grant v. Sec'y of HHS, 956 F.2d 1144, 1148 (Fed. Cir. 1992):

A persuasive medical theory is demonstrated by "proof of a logical sequence of cause and effect showing that the vaccination was the reason for the injury[.]" the logical sequence being supported by "reputable medical or scientific explanation[.]" *i.e.*, "evidence in the form of scientific studies or expert medical testimony[.]"

Without more, "evidence showing an absence of other causes does not meet petitioners' affirmative duty to show actual or legal causation." Grant, 956 F.2d at 1149. Mere temporal association is not sufficient to prove causation in fact. Id. at 1148.

Petitioner must show not only that but for influenza vaccine, his wife would not have had GBS and died, but also that the vaccine was a substantial factor in causing her GBS and death. Shyface v. Sec'y of HHS, 165 F.3d 1344, 1352 (Fed. Cir. 1999).

Petitioner sought legal advice from counsel who told him there was too great an interval of time between flu vaccination and the onset of petitioner's wife's GBS. Petitioner then moved during the initial status conference to dismiss the case.

With too long an interval between vaccination and onset of GBS, petitioner would not have been able to satisfy the third prong (appropriate timing to convey causation), and therefore the second prong (did flu vaccine cause GBS in this case), of the Althen case.

The undersigned **GRANTS** petitioner's motion to dismiss and hereby **DISMISSES** this case. The undersigned offers petitioner and his family sympathy for the loss of Mrs. Parkinson.

CONCLUSION

This petition is **DISMISSED**. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment herewith.²

IT IS SO ORDERED.

DATE

Laura D. Millman
Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by each party's filing a notice renouncing the right to seek review.